IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

THURSDAY, THE 28TH JUNE 2007 / 7TH ASHADHA 1929

WP(C).No. 19907 of 2007(T)

PETITIONER:

M/S.COOKIES INDIA (PRIVATE) LTD.,
CHIYARAM, TRICHUR - 680 026,
REPRESENTED BY ITS DIRECTOR.

BY ADV. SRI.A.M.SHAFFIQUE
SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SRI.ANIL D. NAIR

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY THE SECRETARY TAXES, GOVERNMENT OF KERALA, SECRETARIAT, TRIVANDRUM.

2. THE GENERAL MANAGER, DISTRICT INDUSTRIES CENTRE, TRICHUR-3.

3. THE DIRECTOR OF INDUSTRIES AND COMMERCE, VIKAS BHAVAN, TRIVANDRUM.

4. ASST.COMMISSIONER OF SALE TAX (SPECIAL CIRCLE), TRICHUR.

5. THE DEPUTY COMMISSIONER (APPEALS), COMMERCIAL TAX DEPARTMENT, ERNAKULAM.

6. THE SALES TAX APPELLATE TRIBUNAL, PALAKKAD.

7. THE DEPUTY TAHASILDAR (RR),
TRICHUR.

BY GOVERNMENT PLEADER SRI. BIJOY MATHEW.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR, J.

W.P.(C) No.19907 of 2007-T

Dated this the 28th day of June, 2007.

J U D G M E N T

The petitioner is a company, engaged in the manufacture of biscuits. Its unit undertook major expansion. It is normally qualified for exemption from payment of sales tax for 3 years, from the date of completion of that expansion. But, unfortunately, the biscuits manufacturing units were not covered by the exemption under the notification SRO 1729/93 or the amendments introduced, from time to time, rather such units stands excluded. But, while so, the Government issued Ext.P4 Government Order dated 17-6-2000 modifying the afore-mentioned SRO by bringing under its cover biscuits manufacturing units also. The petitioner immediately filed an application for exemption on 3-7-2000 which is produced as Ext.P5. Ext.P5 was allowed by Ext.P6, by the General Manager, District Industries Centre, Thrissur, granting exemption upto Rs.28,50,300/- for the period from 30-9-1997 to 29-9-2000. The petitioner wanted exemption to be granted for three years from the date of Ext.P4 Government Order. In the meantime, the assessment of sales tax for the year 2000-2001 were completed. The petitioner appealed. The appeal was dismissed. Now, the matter is pending before the Appellate Tribunal. The petitioner took up the decision in Ext.P6 also in appeal, before the State Level Committee. That appeal was dismissed

by Ext.P7 order. The petitioner challenged that order before this Court by filing O.P.36308 of 2002. This Court quashed Ext.P7 and remitted the matter for fresh consideration, in accordance with law. Now, the matter has been re-considered and by Ext.P16 the appeal is again rejected, on 4-6-2007. Therefore, this writ petition is filed, mainly challenging Ext.P16. The learned counsel for the petitioner submitted that unless the petitioner is given 3 years' time from the date of Ext.P4, the exemption granted is meaningless. The period for which exemption is now granted as per Ext.P6 was already over by the time the said order is passed. Therefore practically, the unit could not avail of the said benefit. So, Ext.P4 Government Order should be interpreted to mean that the exemption period could be for a period of 3 years, from the date of that Government Order. But, the respondent maintained that the exemption can be only for 3 years from the date of completion of the expansion by the petitioner, which is admittedly over, in 1997.

3. Going by the provisions of SRO 1729/2003, the period of exemption is available for a period of 3 years from the date of completion of expansion. The General Manager, District Industries Centre, as well as the State Level Committee are bound by the said stipulation. Therefore, I find nothing illegal with the view taken by them. Of course, by the issuance of exemption notification, the petitioner has not been benefited. That is because of the provisions contained in SRO 1729/93. The Officers exercising

the powers under that SRO cannot modify the terms therein. They are bound by it. Only, the Government can issue further clarification, in this regard.

In view of the above position, I find nothing illegal with Ext.P16. So, the Writ Petition is dismissed. But, this will not affect the rights, if any, of the petitioner to move the Government, for appropriate clarification or reliefs.

K.BALAKRISHNAN NAIR,
JUDGE.

MS